SUPREME COURT, U. S.

FILED
MAY 9 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1276

WILLIAM H. ROBERTS, *Petitioner,*

v.

WILLIAM J. McDONALD

and

THE CATHOLIC UNIVERSITY OF AMERICA, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

STEPHEN A. TRIMBLE
916 Union Trust Building
Washington, D. C. 20005

Of Counsel:

HAMILTON AND HAMILTON
916 Union Trust Building
Washington, D. C. 20005

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement of the case	2
Argument	5
I. The decision below is clearly correct	5
II. There are no special and important reasons for granting the Writ of Certiorari	7
Conclusion	9

AUTHORITIES

CASES:

Belleview Gardens, Inc. v. Hill, 111 U.S. App. D.C. 343, 297 F. 2d 185 (1961)	5
Busby v. Electric Utilities Employees Union, 323 U.S. 72, 74-75 (1944)	8
Cox v. Democratic National Committee, 91 U.S. App. D.C. 416, 200 F. 2d 356 (1952)	5
Del Vecchio v. Bowers, 296 U.S. 280 (1935)	8
DeYturbide v. Metropolitan Club, 11 App. D.C. 180 (1897)	6
Dick v. New York Life Insurance Co., 359 U.S. 437, 459 (1959)	8
District of Columbia v. Pace, 320 U.S. 698 (1944)	8
Fisher v. United States, 328 U.S. 463 (1946)	8
Maas v. United States, 125 U.S. App. D.C. 251, 371 F. 2d 348 (1966)	5
Poirier v. Welch, 233 F. Supp. 436 (D.C.D.C., 1964)	6
Roller v. Weigle, 49 App. D.C. 102, 261 Fed. 250 (1919)	7
Tucker v. Warfield, 73 App. D.C. 278, 119 F. 2d 12 (1941)	7
United States ex rel Johnson v. First Colored Baptist Church, 56 App. D.C. 324, 14 F. 2d 296 (1926)	6
Young v. Motion Picture Ass'n. of America, 112 U.S. App. D.C. 35, 299 F. 2d 119, Cert. denied 370 U.S. 922 (1962)	5

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 52	4, 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1276

WILLIAM H. ROBERTS, *Petitioner,*

v.

WILLIAM J. McDONALD

and

THE CATHOLIC UNIVERSITY OF AMERICA, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The findings of fact, conclusions of law, and Orders of the United States District Court for the District of Columbia, and the unreported Per Curiam decision of the United States Court of Appeals for the District of Columbia Circuit are set forth in the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Whether a question of national importance is presented by the denial in the United States District Court for the District of Columbia of the petitioner's motion for a preliminary injunction wherein he sought to enjoin the respondent Catholic University of America from implementing a resolution of its Academic Senate to dissolve an academic unit and transfer its faculty, students and degree programs to another department of the University.

STATEMENT OF THE CASE

Petitioner William H. Roberts is an Ordinary Professor of the faculty of the respondent Catholic University of America, having taught in the field of International Law and Relations prior to January, 1956, in the University's Department of Politics which he headed (JA 280, 281), and which was a department under the jurisdiction of the Graduate School of Arts and Sciences.

On January 25, 1965, the University's Board of Trustees approved the establishment of an Institute of International Law and Relations as separate and distinct from the Department of Politics and the appointment of Dr. Roberts as Director thereof (JA 274-275). Pursuant to the terms of the Trustees' resolution, a meeting was held on February 5, 1965, of the various department heads and deans affected thereby to discuss the implementation of the establishment of the Institute, including the academic, administra-

tive, coordinative and other factors involved. The minutes of this meeting were signed by all those present (JA 247-261).

Subsequently, the Institute was, in fact, established and Dr. Roberts was appointed Director (JA 282). On May 25, 1966, Dr. Roberts filed the case at bar, a suit for damages against the University and its Rector (JA 11).

On October 26, 1967, the Academic Senate of the University (composed of the deans and certain faculty members [JA 217]) passed a resolution recommending the dissolution of the Institute on the basis of various policy, academic and administrative considerations which had been experienced, and recommending the transfer of its functions back to the Department of Politics of the Graduate School of Arts and Sciences (JA 276-278). On November 2, 1967, Dr. Roberts sought to restrain the implementation of this resolution in his amended motion for a preliminary injunction (JA 64). The motion was argued fully before Judge John J. Sirica (JA 444-496), who denied said motion, entering findings of fact, conclusions of law and an appropriate order on November 21, 1967 (JA 534-541). Notice of Appeal was filed by Dr. Roberts on November 28, 1967 (JA 544).

Dr. Roberts then filed in the United States Court of Appeals for the District of Columbia Circuit a motion for injunction pending appeal, which was argued before Judges Burger, Tamm, and Robinson. This motion was denied by a unanimous order dated January 12, 1968 (JA 546). Similar relief was denied petitioner in this Court by Chief Justice Warren on January 30, 1968 (JA 547).

Appellant then filed in the District Court a second amended motion for a preliminary injunction, which was heard by Judge George L. Hart, at which hearing testimony was received (JA 499-533). Judge Hart found that Dr. Roberts had failed to make any showing that he was entitled to the extraordinary relief he requested, and denied said motion (JA 542-543). A Notice of Appeal was filed by Dr. Roberts on February 15, 1968 (JA 545), and the two appeals were consolidated by order of the Court of Appeals dated April 3, 1968.

Subsequent to the conclusion of Dr. Roberts' unsuccessful quests for injunctive relief pending appeal, the Institute was dissolved. Its functions, degree programs, faculty and students were transferred back to the University's Graduate School of Arts and Sciences (Department of Politics) in February, 1968, at the commencement of the second semester of the 1967-1968 academic year.

The issues argued in the Court of Appeals focused on the respondents' claim of mootness of the appeal, as well as the traditional issues involved in the review of a District Court's findings of fact, conclusions of law, and Order invoking its discretion in the denial of a motion for a preliminary injunction. As shown in Appendix B, the Court of Appeals did not reach the question of mootness, inasmuch as it found the findings of the District Court were beyond serious challenge under Rule 52, Federal Rules of Civil Procedure, and that the denial of the injunction by the District Court was amply within the bounds of said judicial discretion.

ARGUMENT

I

The Decision Below Is Clearly Correct

The petitioner's quest for a preliminary injunction involved the exercise of the discretion of the District Court. The scope of review involved in an appeal from the denial of a preliminary injunction under District of Columbia law is limited, it being settled in that jurisdiction that such a denial will not be set aside except for clear error or an abuse of discretion. This principle was adhered to in *Cox* v. *Democratic National Committee,* 91 U.S. App. D.C. 416, 200 F.2d 356 (1952), *Young* v. *Motion Picture Assoc. of America,* 112 U.S. App. D.C. 35, 37, 299 F.2d 119, 121, Cert. denied 370 U.S. 922 (1962), and was commented upon in *Maas* v. *United States,* 125 U.S. App. D.C. 251, 371 F.2d 348 (1966).

Moreover, under District of Columbia law, a heavy burden is imposed upon one to demonstrate that findings of fact are "clearly erroneous" under Rule 52 of the Federal Rules of Civil Procedure. See *Belleview Gardens, Inc.* v. *Hill,* 111 U.S. App. D.C. 343, 297 F.2d 185 (1961). The statement of the Court of Appeals that the findings are ". . . beyond serious challenge . . ." was an understatement, when it is seen that the findings are based directly upon unimpeached exhibits in the record.

The record discloses that the findings of fact numbered 1, 2 and 3 deal with the position of Dr. Roberts, the University, and the Statutes of the University, and are based upon the amended complaint (JA 11, 12) and the Statutes (JA 211-213). Findings numbered 4, 5, 8, 9 and 10 are concerned with Dr. Roberts'

various appointments, following his positions up to the time of the hearing, and are based directly upon exhibits in the record (JA 280-283). Findings numbered 6 and 7 relate to the establishment of the Institute of International Law and Relations, and are based upon the Resolution of the Board of Trustees of January 21, 1965 (JA 274) and the minutes of the meeting of the appropriate faculty members held to discuss the implementation of the establishment of the Institute (JA 247-261). Findings numbered 11 and 12 detailed the resolution of October 26, 1967, of the Academic Senate recommending the dissolution of the Institute and the transfer of its functions, as well as the notice thereof to Dr. Roberts, and were based directly upon documents in the record (JA 276-278, 284).

The conclusions of law are similarly sound, involving legal inferences from the documents and the familiar principle of local law that the courts will not interfere with the internal operations of corporations or organizations where the challenged actions of said bodies are within the constitutions, rules or by-laws of such organizations. *DeYturbide* v. *Metropolitan Club,* 11 App. D.C. 180 (1897); *United States ex rel Johnson* v. *First Colored Baptist Church,* 56 App. D.C. 324, 14 F.2d 296 (1926); and *Poirier* v. *Welch,* 233 F. Supp. 436, 439 (D.C.D.C., 1964).

The conclusion of law commenting upon petitioner's failure to make a showing of irreparable injury is also valid. Petitioner still enjoys his tenure at the University, teaching in the field of International Law and Relations. The dissolution of the Institute and the transfer of its functions involved only an administrative change in an attempt to solve the various

academic and administrative problems which had been experienced and become manifest during the life of the Institute. Dr. Roberts, the faculty, students and degree programs formerly in the Institute were merely to be transferred to the Department of Politics of the Graduate School of Arts and Sciences (JA 294-296). No one was to be dismissed, and no one was to be irreparably damaged or prejudiced by the dissolution.

Thus, the trial court's exercise of its discretion cannot be challenged, particularly in view of the traditional principles that equity will decline to specifically enforce a personal service contract where the remedy is not mutual. See *Roller* v. *Weigle,* 49 App. D.C. 102, 261 Fed. 250 (1919) and *Tucker* v. *Warfield,* 73 App. D.C. 278, 119 F.2d 12 (1941). Moreover, if the Court had granted the relief requested by petitioner, it would have not only invaded the internal operations of the University, but would have continued a situation which had been found to be academically and administratively unsound by learned University deans and scholars, in a field foreign to the expertise of the trial court.

II

There Are No Special and Important Reasons for Granting the Writ of Certiorari

As shown above, this case turns upon the application of the local law of the District of Columbia on the question of whether a preliminary injunction should issue upon the particular facts of this case. This Court has on many occasions commented to the effect that it will not ordinarily review the decisions of the United States Court of Appeals for the District of

Columbia Circuit in cases which are based upon the statutes or common law of the District of Columbia. *Del Vecchio* v. *Bowers,* 296 U.S. 280, 285 (1935), *District of Columbia* v. *Pace,* 320 U.S. 698, 702 (1944), *Busby* v. *Electric Utilities Employees Union,* 323 U.S. 72, 74-75 (1944) and *Fisher* v. *United States,* 328 U.S. 463, 476 (1946).

This case is of no importance save to the parties. It concerns no national issue. It involves only a discretionary decision based upon local law and the particular facts involved, and will not serve as a precedent, particularly in view of the fact that the opinion of the Court of Appeals was unprinted and unreported. Once concluded, the case will lack further significance. A grant of the writ of certiorari here would only serve to invite litigants to seek review of the thousands of discretionary rulings made by District Courts upon injunction cases, and the discretionary rulings of the Courts of Appeals upon procedural questions while in the appellate stage, unrelated to the essential holding in the case. Members of this Court have noted that "the litigous tendency of our people and the unwillingness of litigants to rest content with adverse decisions after their cause has been litigated in two and often in three Courts, lead to attempts to get a final review by the Supreme Court in literally thousands of cases which should never reach the highest Court of the land". See Mr. Justice Frankfurter, dissenting in *Dick* v. *New York Life Insurance Co.,* 359 U.S. 437, at 459 (1959). The respondents submit that this is such a case.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

STEPHEN A. TRIMBLE
916 Union Trust Building
Washington, D. C. 20005

Of Counsel:

HAMILTON AND HAMILTON
916 Union Trust Building
Washington, D. C. 20005